

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Epidemic Sound, AB v. Meta Platforms, Inc.

Epidemic Sound · No. 22-cv-04223-JSC · Decided October 28, 2025

OPINION

Epidemic Sound, AB v. Meta Platforms, Inc.

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 EPIDEMIC SOUND, AB, Case No. 22-cv-04223-JSC 8 Plaintiff,

ORDER RE: EPIDEMIC'S MOTION

9 v. TO REOPEN DISCOVERY

10 META PLATFORMS, INC., Re: Dkt. No. 317 Defendant. 11 12 13 Pending before the Court is
Epidemic Sound, AB's ("Epidemic's") motion to reopen 14 discovery. (Dkt. No. 317.) Epidemic
asks the Court to reopen fact discovery "for the limited 15 purpose of compelling Meta to produce
and log documents it has withheld on the basis of an 16 asserted 'common interest privilege,' after
the fact discovery cutoff of April 30, 2025." (Dkt. No. 17 317-1 at 2.) Epidemic appears to seek
such documents to the extent they are relevant to the 18 documents the Court recently ordered
Epidemic to produce ("Recently Produced 19 Communications"). (Dkt. No. 317 at 9.) Epidemic's
motion is DENIED in part.

20 DISCUSSION

21 Meta represents it has produced redacted versions of the only communications after April 22
30, 2025 relevant to the Recently Produced Communications. (Dkt. No. 325-1 ¶¶ 7, 9-10.) Those
23 communications consist of one email thread between Meta's counsel and counsel for a third-
party 24 distributor-indemnitor. (Dkt. No. 325-4.) Meta has met its burden of showing the 25
communications are properly redacted because the emails are between Meta's counsel and the 26
third-party indemnitor's counsel, and their subject line establishes they involve litigation strategy
27 about this case and hence, attorney work product. See *In re Grand Jury Subpoena*, 357 F.3d
900, 1 product privilege through Meta's counsel's sharing with the third party's counsel. See, e.g.,
2 *Callwave Commc'ns, LLC v. Wavemarket, Inc.*, No. C 14-80112 JSW (LB), 2015 WL 831539,
at 3 *4 (N.D. Cal. Feb. 23, 2015) ("The common interest doctrine is not a privilege in and of
itself, but 4 rather serves as an exception to waiver of the . . . attorney work product privilege.").
Epidemic's 5 speculation the communications regarding a litigation stipulation might be business
related is 6 unpersuasive. 7 In reply, Epidemic also contends Meta is withholding responsive

documents with non- 8 indemnitor third parties. (Dkt. No. 330 at 7-8.) But Meta represents it searched for 9 communications with all non-indemnitor third parties related to the Recently Produced 10 Communications and “confirmed that Meta does not have responsive communications with any of 11 these non-indemnitor third parties that have not already been produced to Epidemic during fact 12 discovery or that Meta is withholding as privileged.” (Dkt. No. 325-1 ¶¶ 9-10.) As to the latter 13 representation, the Court understands Meta to be attesting it is not withholding any post-April 30, 14 2025 communications with non-indemnitor third parties related to the Recently Produced 15 Communications. 16 Epidemic also appears to be challenging Meta’s failure to log communications—in 17 particular, communications with distributor-indemnitor third parties—which occurred prior to the 18 close of fact discovery. (Dkt. No. 330 at 5, 7.) Although Epidemic’s motion itself is confusing, 19 Epidemic’s own proposed order sought only post-April 30, 2025 communications; it did not seek a 20 log of communications before that date. (Dkt. No. 317-1 at 2.) The Court will hold Epidemic to 21 the relief sought in its proposed order. Further, the parties’ ESI Order plainly permitted the parties 22 to not log post-complaint communications involving inside or outside counsel’s work product. 23 (Dkt. No. 72 § 8(b)(i).) While Epidemic now argues it did not intend for that provision to apply to 24 “communications with third parties which may have originated with a party’s in-house or outside 25 counsel,” Epidemic does not argue the plain language of the ESI order it negotiated does not cover 26 such communications if a party believes work product protection exists. (Dkt. No. 330 at 11.) 27 And, since the record reflects Epidemic was aware Meta was withholding such communications as 1 That said, it is unclear to the Court whether Meta is withholding as privileged any pre- 2 April 30, 2025 communications with the persons or entities (or their counsel) identified in the 3 Recently Produced Communications. If Meta uses the Recently Produced Communications at 4 trial, or on summary judgment, fairness requires Epidemic to at least be on notice whether Meta 5 had post-complaint communications with those same parties and is withholding the same as 6 privileged. So, Meta shall log communications relevant to Epidemic’s Recently Produced 7 Communications, if any exist, and produce the log to Epidemic by November 20, 2025.

8 ADMINISTRATIVE MOTIONS TO SEAL

9 Meta’s motion to seal yellow highlighted portions of its opposition (Dkt. No. 326-2) and 10 Exhibit M (Dkt. No. 326-3) is DENIED. Meta’s counsel declares under “penalty of perjury”: 11 There is good cause to seal the material, which references highly confidential, nonpublic information maintained by Meta regarding its 12 business practices, including confidential details of its relationships with, and the services it provides to, certain commercial partners in 13 the music industry, and the terms of its licensing arrangements with those entities. 14 (Dkt. No. 326-1 ¶ 4.) Counsel’s declaration is untethered to the passages sought to be sealed. 15 First, Exhibit M, filed entirely under seal, consists of a one-page public court transcript. 16 (Dkt. No. 326-3 at 5.) And, there is nothing remotely confidential or nonpublic in that one page. 17 Second, no reasonable attorney could have genuinely believed the highlighted portions of 18 the opposition

“reference[] highly confidential, nonpublic information maintained by Meta 19 regarding its business practices.” (Dkt. No. 326-1 ¶ 4.) For example, Meta seeks to seal the 20 following: 21 On June 26, 2025, Meta requested that Epidemic immediately 22 produce the missing communications, as well as any others like it, as responsive to Meta’s Requests for Production (“RFPs”), specifically 23 RFP Nos. 30, 71, and 72. After a series of email exchanges in which Meta demanded that Epidemic produce these communications (which 24 were between Epidemic and third parties during fact discovery, did not copy Meta, and were neither in Meta’s possession, custody, nor 25 control), and Epidemic repeatedly refused, on July 9, 2025, Epidemic finally agreed to supplement its production. Yet, before completing 26 these productions, Epidemic’s counsel expressly threatened on July 30, 2025, that if Meta were to “pursue these issues with the Court,” 27 that Epidemic, in retaliation, “will seek all of [Meta’s] 1 (Dkt. No. 326-1 at 2; Dkt. No. 326-2 at 7-8.) It is self-evident none of the above reveals 2 || confidential business information. 3 With respect to Epidemic’s designated information in Meta’s filing, (Dkt. Nos. 327, 329), 4 || Epidemic has shown good cause to seal pages 7 to 13 of Ex. L to the Pizano Declaration (Dkt. No. 5 || 327-8).

6 CONCLUSION

7 Epidemic’s motion to reopen discovery is DENIED, except by November 20, 2025, Meta 8 shall produce a log of communications relevant to Epidemic’s Recently Produced 9 || Communications, if any exist. Meta shall file a fully unredacted version of its opposition to 10 || Epidemic’s motion and Exhibit M by November 3, 2025. 11 Further, going forward, any motion to seal Meta makes regarding its own confidential 12 || information shall include a declaration from counsel supporting sealing that swears, under oath, 13 that counsel has personally reviewed the proposed redactions and certifies they are requested in 14 || good faith. 15 Meta’s request for fees is DENIED. a 16 This Order disposes of Docket Nos. 317, 326 and 327. IT IS SO ORDERED. 18

Dated: October 28, 2025 20 mm

JACQUELINE SCOTT CORL

21 United States District Judge 22 23 24 25 26 27 28